

REMARKS

By way of summary, Claims 1-20 were originally filed with the application. By previous amendments, Claims 1-5, 8, 9, and 12-15 have been amended or canceled. By this amendment, Claim 15 is being amended and Claims 5-11 are being canceled without prejudice or disclaimer to facilitate expeditious prosecution of this application. No new claim is added. Applicant respectfully requests the Examiner to reconsider the pending claims in view of the above amendments and the following remarks.

Claim Rejections Based on 35 USC § 112

Claims 5-11 are rejected under 35 USC § 112, second paragraph. Applicant notes that Claims 5-11 are being canceled for the sake of expediency.

Claim Rejections Based on 35 USC § 103

Claims 5-7 are rejected as being unpatentable over Gray (U.S. Patent No. 7,077,826) in view of Bittner et al. (U.S. Patent No. 5,515,871). Claim 8 is rejected as being unpatentable over Gray in view of Bitter and further in view of Sapienza (U.S. Patent No. 5,376,081). Claims 5 and 9-11 are rejected as being unpatentable over Caspari et al. (U.S. Patent No. 4,890,615) in view of Weng (U.S. Patent No. 5,569,270) and Bittner. Applicant notes that Claims 5-11 are being canceled for the sake of expediency.

Claims 15-18 are rejected as being unpatentable over Weng in view of Baber (U.S. Patent No. 5,152,769). Claims 19 and 20 are rejected as being unpatentable over Weng in view of Baber in further view of Caspari.

With respect to Claim 15, Applicant notes that none of the referenced cited so far in the present application, either individually or in combination, disclose or suggest a limitation where suture is introduced into a needle from outside of the needle and drawn in further by drawing of liquid through the needle's tip. In fact, references such as Weng teach designs and functionalities where such introduction of suture would be highly counter-productive.

In Weng, a spool (36) of suture is shown (Fig. 1) to be loaded in a handle (26) via a door (38) also on the handle. A suture (44) originating from the spool (36) is fed through a cylindrical portion (24) and through a needle (46) via fluid emerging from a fluid outlet (28) that is positioned in the cylindrical portion (24) and away from the spool (36) (Fig. 2). Such passing of suture through the needle works generally due to Venturi effect, where a higher flow speed in the needle due to a smaller sectional area results in the suture pulling portions behind it.

Consequently, a suture drawn back into the Weng device (via, for example, the suction source 30) through the needle (44) would result in a relatively fast moving suture entering the cylindrical portion (24) where the flow speed is slower. Thus, the drawn suture would have a tendency to accumulate in the cylindrical portion (24). In any event, the drawn suture would not wind back on the spool (36), or even travel to the handle region (source location) due to the position of the suction inlet (30).

In the amended form of Claim 15, a unique step of "drawing a quantity of liquid through said distal end of said needle so as to further draw said length of suture towards said syringe" is recited. At least in part due to this limitation, Applicant removes other limitations (such as needle tip configurations) that were added in previous amendments.

With respect to Claim 16, the Examiner states that drawing of suture into the syringe would be "obvious to one of ordinary skill in the art" because "choosing from a finite number of identified predictable solutions would have a reasonable expectation of success." Applicant respectfully disagrees with this conclusory statement, particularly in view of cited references that teach away from the combination of recited limitations. The Federal Circuit has consistently held that "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007).

For at least the foregoing reasons, Applicant respectfully requests reconsideration of these rejections.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Conclusion

In view of the foregoing, Applicant respectfully submits that all pending claims of the present application are in condition for allowance, and such action is earnestly solicited. Should there be any impediment to the prompt allowance of this application that could be resolved through a telephone conference, the Examiner is respectfully requested to call the undersigned at the number shown below.

Respectfully submitted,

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